

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2021-0043

IN RE: IMPOUNDED CASE

RESERVATION AND REPORT¹

The petitioner² is an adult male, who currently faces criminal charges in the Worcester District Court and the Worcester Superior Court. While awaiting trial at the Worcester County House of Correction, the petitioner initially was evaluated by a qualified examiner pursuant to G. L. c. 123, § 18 (a), and was subsequently admitted to Bridgewater State Hospital for further examination and observation. The petitioner was thereafter committed to Bridgewater for six months on April 17, 2019, and recommitted for one year on December 4, 2019. On December 2, 2020, in anticipation of the expiration of the commitment, Bridgewater filed a petition in the District Court seeking to extend the commitment for an additional year. See G. L. c. 123, §§ 7, 8, and 18 (a). After a hearing on the petition, the District Court issued an order of commitment dated January 6, 2021.

The parties represent that the judge, in his commitment order, made the necessary findings to commit the petitioner to a facility of the Department of Mental Health, but stopped short of finding that the “strict security” of Bridgewater State Hospital was necessary. The judge

¹ This reservation and report is not impounded and is public.

² I use the term “petitioner” throughout this reservation and report to refer to the individual who filed the pending petition for extraordinary relief and declaratory relief with this Court. As described below, that individual is the defendant in two criminal proceedings, as well as the respondent in the underlying proceeding for involuntary civil commitment.

thus ordered that the petitioner be committed to a Department of Mental Health facility for up to one year. In response to this order, the Commissioner of the Department of Correction issued a certification to the District Court pursuant to G. L. c. 123, § 18 (a), stating the petitioner's continued confinement at Bridgewater was "necessary to insure his continued retention in custody," which the commissioner contends effectively overrode the judge's determination that a commitment to a Department of Mental Health facility would be sufficient. As a result of the certification, the petitioner remains held at Bridgewater. The petitioner filed a motion in the District Court to hold the Department of Correction in contempt for failing to release him to the Department of Mental Health, but that motion was denied.

In this petition for extraordinary relief pursuant to G. L. c. 211, § 3, and declaratory relief pursuant to G. L. c. 231A, § 1, the petitioner asserts that the portion of G. L. c. 123, § 18 (a), that provides for certification by the commissioner is an unconstitutional encroachment on the powers of the judicial branch and, further, that the statutory certification process violates his substantive due process rights. The petitioner also argues that the appellate process by which one ordinarily challenges an order of commitment, viz., an appeal to the Appellate Division of the District Court, is inapplicable here because the petitioner is challenging the certification of the commissioner, not the commitment order of the District Court; the petitioner therefore maintains that his only available remedy is through this petition under G. L. c. 211, § 3. The respondents deny that the certification process is constitutionally infirm, and they assert that, in any event, the petitioner can raise his constitutional challenges in normal appellate process.

It is debatable whether the petitioner has an adequate remedy in these circumstances other than through G. L. c. 211, § 3. Regardless, I conclude that the issues raised are of sufficient novelty and importance that they ought to be decided now by the full court in the first

instance. I therefore exercise my discretion to reserve and report the matter to the full court for decision on the record before the before the single justice in SJ-2021-043. In addition to the issues of separation of powers, substantive due process, and any other issues the parties choose to argue, the parties should also address in their briefs what the appropriate process should be, in future cases, for an individual in the petitioner's situation to challenge a certification of the commissioner in cases like this.

The parties shall prepare and file in the full court a comprehensive statement of agreed facts necessary to resolve the issues raised by the petition. The statement shall be prepared in time for inclusion in the parties' record appendix. The parties shall also ensure that the record appendix in this case includes all necessary documents from the District Court record to support any agreed facts regarding the procedural background and prior rulings and administrative decisions in this case, including but not limited to: the District Court docket; the December 2, 2020, petition for involuntary commitment with any attachments; the certification filed by the Department of Correction (and any other documents relevant to the certification process); and all relevant orders and rulings of the District Court, including transcripts of relevant court hearings.

The petitioner shall be deemed the appellant, and the respondents shall be deemed the appellees. Time is of the essence, as the petitioner currently remains held at Bridgewater State Hospital due to the challenged certification. Consequently, briefing shall be expedited to permit the full court to hear oral argument in this matter during the April sitting. The statement of agreed facts, the parties' record appendix, and the appellant's brief shall be filed with the Clerk of the Supreme Judicial Court for the Commonwealth on or before Thursday, March 18, 2021. The appellees' brief shall be filed with the Clerk on or before Tuesday, March 30, 2021.

Any briefs or letters of amici curiae shall be filed in the full court on or before Tuesday, March 30, 2021. If any potential amici curiae seek access to the parties' briefs for purposes of preparing an amicus brief or letter, the full court will process those motions immediately upon filing, and if allowed, the parties will then be required to provide redacted briefs for that purpose forthwith.

By the Court,

/s/ Serge Georges, Jr.
Associate Justice

Entered: March 4, 2021